

## CCRB INVESTIGATIVE RECOMMENDATION

|   |                                     |                           |  |                                    |                                 |
|---|-------------------------------------|---------------------------|--|------------------------------------|---------------------------------|
| Investigator:<br>Eliana Behar                     | Team:<br>Squad #1                   | CCRB Case #:<br>201909404 | <input type="checkbox"/> Force                         | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|   |                                     |                           | <input checked="" type="checkbox"/> Abuse              | <input type="checkbox"/> O.L.      | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Tuesday, 10/22/2019 7:00 PM   | Location of Incident:<br>§ 87(2)(b) | Precinct:<br>75           | 18 Mo. SOL<br>4/22/2021                                | EO SOL<br>12/7/2021                |                                 |
| Date/Time CV Reported<br>Wed, 10/23/2019 10:25 AM | CV Reported At:<br>IAB              | How CV Reported:<br>Phone | Date/Time Received at CCRB<br>Mon, 10/28/2019 11:19 AM |                                    |                                 |

  

| Complainant/Victim | Type       | Home Address |
|--------------------|------------|--------------|
| § 87(2)(b)         | § 87(2)(b) | § 87(2)(b)   |
| § 87(2)(b)         | § 87(2)(b) | § 87(2)(b)   |

  

| Witness(es) | Home Address |
|-------------|--------------|
| § 87(2)(b)  | § 87(2)(b)   |

  

| Subject Officer(s)    | Shield | TaxID  | Command |
|-----------------------|--------|--------|---------|
| 1. POM Michael Devito | 06976  | 954729 | 075 PCT |

  

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|--------------------|-----------|--------|----------|
| 1. POM Jack Cleary | 16587     | 967004 | 075 PCT  |

  

| Officer(s)           | Allegation   | Investigator Recommendation |
|----------------------|--|-----------------------------|
| A.POM Michael Devito | Abuse: Police Officer Michael Devito threatened to arrest § 87(2)(b) | § 87(2)(b)                  |
| B.POM Michael Devito | Abuse: Police Officer Michael Devito threatened to arrest § 87(2)(b) | § 87(2)(b)                  |

### Case Summary

§ 87(2)(b) filed this complaint with IAB on October 23, 2019 and it was received by the CCRB on October 28, 2019.

On October 22, 2019, at approximately 8:00pm, Police Officer Jack Cleary and Police Officer Michael Devito, of the 72<sup>nd</sup> Precinct, responded to § 87(2)(b) in Brooklyn regarding a domestic dispute among § 87(2)(b) and § 87(2)(b). PO Devito threatened to arrest § 87(2)(b) and § 87(2)(b) (**Allegation A - Abuse of Authority:** § 87(2)(b) **Allegation B – Abuse of Authority:** § 87(2)(b)).

There is no BWC video footage for this incident (Board Review 01). The incident type was not a mandatory activation event (Board Review 07).

§ 87(2)(b) provided video and audio footage of this incident which she recorded on her cellphone (Board Reviews 03-04).

### Findings and Recommendations

**Allegation (A) - Abuse of Authority: Police Officer Michael Devito threatened to arrest § 87(2)(b).**

**Allegation (B) - Abuse of Authority: Police Officer Michael Devito threatened to arrest § 87(2)(b).**

§ 87(2)(b) stated that she and her brother, § 87(2)(b) each called 911 to report that their aunt, § 87(2)(b) verbally harassed them. § 87(2)(b) did not cooperate with providing a statement to the CCRB. § 87(2)(b) and § 87(2)(b) all reside in the home. § 87(2)(b) and § 87(2)(b) reside in bedrooms located on the main floor of the home, whereas § 87(2)(b) resides in a private bedroom located in the basement. The house is owned by § 87(2)(b) and § 87(2)(b)'s grandmother, who resides on the main floor of the home. § 87(2)(b) and § 87(2)(b) are both tenants of the home. The dispute began when § 87(2)(b) wanted access to § 87(2)(b)'s locked bedroom in order to retrieve § 87(2)(b)'s grandmother's belongings, which were inside of a few boxes in the room. PO Devito and PO Cleary responded, and PO Devito spoke with § 87(2)(b) and § 87(2)(b)'s grandmother. PO Devito then told § 87(2)(b) that her grandmother needed access to her belongings, which were located in § 87(2)(b)'s locked bedroom. PO Devito stated that he spoke to the grandmother, and § 87(2)(b) had the right to access the grandmother's belongings since the grandmother owned the home. PO Devito said that § 87(2)(b) and § 87(2)(b) had to grant access to the bedroom or else § 87(2)(b) and § 87(2)(b) would get arrested (Board Review 02).

§ 87(2)(b) stated that on October 22, 2019, both she and § 87(2)(b) called the police separately regarding the dispute. § 87(2)(b) stated that the responding officers tried to diffuse the dispute between her and § 87(2)(b). The officers told § 87(2)(b) that § 87(2)(b) is the landlord and therefore has access to the downstairs of the home. § 87(2)(b) reported that she did not hear either officer threaten to arrest § 87(2)(b) or § 87(2)(b) but she was not present for their entire interaction.

The audio footage captures the same incident that is in the video footage, however the audio recording is longer and begins before the video recording. The audio captures when the police first arrive at the home. Beginning at 14:00 of the audio recording, PO Devito suggests that § 87(2)(b) grab the items that belong to the grandmother and put them at the "front of the room." At 15:30, PO Devito confirms that the boiler is downstairs, and that the grandmother has access and authority

to the basement and only wants to grab some boxes from the "hallway". PO Devito also confirms that "she" has keys. § 87(2)(b) confirms that "she" has keys and has access to go wherever she wants. PO Devito says that § 87(2)(b) just wants to take some boxes, that belong to the grandmother, out of the hallway and not to touch or take anything belonging to the § 87(2)(b). § 87(2)(b) then tells PO Devito, "I would like you to come and see... to visualize what is going on." (Board Review 04).

When the video begins (at 16:30 of the audio), § 87(2)(b) and PO Devito are in the basement, with § 87(2)(b) and § 87(2)(b) seemingly in a storage area while § 87(2)(b) and PO Devito appear to be in § 87(2)(b)'s bedroom. In a back and forth discussion about whether to allow access to the grandmother's items, PO Devito at 20:05 of the audio, says that § 87(2)(b) will "be the one who ends up getting locked up" because § 87(2)(b) will say that her stuff was stolen and that § 87(2)(b) was the only one who had access, so § 87(2)(b) will be the one who "goes down" for it. PO Devito does not discuss personally arresting § 87(2)(b) or doing so at that moment. At no point in the audio/video recording does PO Devito mention the arrest of § 87(2)(b) in any way. The parties agree to a transfer of items the following day (Board Review 03, 04).

PO Devito did not recall this incident until he was shown the video that § 87(2)(b) took (Board Review 03). After watching this video, PO Devito recalled that he responded to two 911 calls from § 87(2)(b): one call from § 87(2)(b) and one call from § 87(2)(b). The call involved a dispute between the two parties. PO Devito stated that § 87(2)(b) and § 87(2)(b) would not allow § 87(2)(b) access to § 87(2)(b)'s bedroom to retrieve the grandmother's belongings. PO Devito told § 87(2)(b) and § 87(2)(b) that § 87(2)(b) was allowed to have access to the common areas of the basement though not § 87(2)(b)'s bedroom. PO Devito "mediated" the issue of the property in the bedroom by telling them that he would stand guard and allow § 87(2)(b) the owner of the home, to retrieve her belongings from § 87(2)(b)'s bedroom as long as there was no dispute over the owner of the property. Any disputed property would have to be handled in court. He stated that § 87(2)(b) consented and allowed § 87(2)(b) to retrieve the items under PO Devito's supervision. § 87(2)(b) was upset that § 87(2)(b) agreed to the arrangement. PO Devito stood downstairs while § 87(2)(b) retrieved her possessions and watched her go upstairs. PO Devito stated that there was no dispute regarding what § 87(2)(b) took from § 87(2)(b)'s bedroom, and he did not recall threatening to arrest anyone at any point. He also stated that no actions would have warranted making an arrest during this incident (Board Review 05).

PO Cleary was not interviewed regarding this incident as he resigned from the NYPD as of January 22, 2020 (Board Review 06).

The audio/video footage captured PO Devito, hypothetically, tell § 87(2)(b) that if § 87(2)(b) alleged that items were missing or stolen, § 87(2)(b) could end up getting arrested. Although § 87(2)(b) interpreted PO Devito's statement as a threat of arrest, PO Devito considered his words and actions as a form of mediation to resolve the dispute. While PO Devito's statement of a future possibility was not referring to PO Devito arresting § 87(2)(b) in the moment, the purpose of the statement was to obtain § 87(2)(b)'s cooperation.

§ 87(2)(g)

§ 87(2)(g)

### **Civilian and Officer CCRB Histories**

**CCRB Case # 201909404**

- § 87(2)(b) has been a party to one CCRB complaint and has been named as the victim in one allegation (Board Review 09).

■ § 87(2)(b)

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 10).
- PO Devito has been a member of service for six years and has been a subject in two prior CCRB complaints and two allegations, neither of which was substantiated. § 87(2)(g)

### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- As of January 23, 2020, the New York City Office of Comptroller has no record of a Notice of Claim being filed regarding this complaint (Board Review 08).

• [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

■

Squad No.: 1

|               |                     |                    |                |
|---------------|---------------------|--------------------|----------------|
| Investigator: | <u>Eliana Behar</u> | <u>Inv. Behar</u>  | <u>2.10.21</u> |
|               | Signature           | Print Title & Name | Date           |

|               |                         |                    |                |
|---------------|-------------------------|--------------------|----------------|
| Squad Leader: | <u>Mgr. Joy Almeyda</u> |                    | <u>2.10.21</u> |
|               | Signature               | Print Title & Name | Date           |

|           |           |                    |      |
|-----------|-----------|--------------------|------|
| Reviewer: |           |                    |      |
|           | Signature | Print Title & Name | Date |